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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44555
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2016-6823
)	
KEVIN NEIL CHARLES,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Charles failed to establish that the district court abused its discretion by imposing a unified sentence of 10 years, with two years fixed, upon his guilty plea to felony domestic violence?

Charles Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Charles pled guilty to felony domestic violence and the district court imposed a unified sentence of 10 years, with two years fixed. (R., pp.57-59.) Charles filed a notice of appeal timely from the judgment of conviction. (R., pp.60-62.)

Charles asserts his sentence is excessive in light of his acceptance of responsibility, remorse, recent work history, need for alcohol abuse treatment, and family support. (Appellant's brief, pp.3-7.) The record supports the sentence imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted)). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, "[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court." Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for domestic violence is 10 years. I.C. § 18-918(2). The district court imposed a unified sentence of 10 years, with two years fixed, which falls within the statutory guidelines. (R., pp.57-59.) Charles claims "his recent

employment history and positive work attitude support a lesser sentence.” (Appellant’s brief, p.5.) However, a review of the record shows Charles was only steadily employed for approximately 17 months before he committed the crime of violence of which he was convicted in this case; he lost two prior jobs, one because he was “incarcerated” and the other because he battered a female co-worker. (PSI, p.11.) Charles also claims the district court should have imposed a lesser sentence because he expressed remorse and accepted responsibility for his actions. (Appellant’s brief, p.4.) However, this claim is directly contrary to the district court’s specific finding that Charles was not honest about his prior violence and, in fact, did not take responsibility in this crime. (See 10/3/16 Tr., p.12, Ls.13-20.) Finally, that Charles believes his need for alcohol abuse treatment entitled him to a lesser sentence does not establish an abuse of discretion. The district court specifically considered the fact that Charles is an alcoholic, but it also noted that Charles had indicated “an unwillingness to control his drinking.” (10/3/16 Tr., p.12, L.24 – p.13, L.2.) In fact, the court found Charles’ claim that he did not know where to go for help for his alcohol addiction not “the least bit credible,” observing that A.A. is “free and there’s hundreds of A.A. groups around the valley where people who want to be sober are having the tools to stay sober, and who have a support network that really supports them.” (10/3/16 Tr. p.10, Ls.18-21.)

The state submits that Charles has failed to establish an abuse of discretion, for the above reasons, as well as for the reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (See 10/3/16 Tr., p.10, L.2 – p.14, L.20 (Appendix A).)

Conclusion

The state respectfully requests this Court to affirm Charles' conviction and sentence.

DATED this 16th day of May, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of May, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

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1 he's done wrong from the beginning. He told the court he
 2 was guilty. He needs help with his drinking.
 3 That's evidenced by the statement from the
 4 victim and the materials, which talked to the domestic
 5 violence evaluator that his drinking had got out of
 6 control. I think he is willing to admit at this point
 7 that he needs some sort of alcohol specific treatment or
 8 substance abuse treatment.
 9 He has a decent work history. He's set up a
 10 life where he's able to work. He has a decent work
 11 history. He has a decent life. He has -- the job was set
 12 up so he could come home and help take care of the
 13 children. He had things going. He just couldn't get the
 14 drinking under control.
 15 Unfortunately, it's spiraled to the point
 16 where he's sitting in front of the court. He faces the
 17 parole sanction. He has to likely deal with the parole
 18 commission on what they're going to do with him there.
 19 The DV eval indicates that Mrs. Charles
 20 states his type of abuse was an isolated incident and
 21 she's talks about the drinking and how that had certainly
 22 got carried away.
 23 I think he has a pretty positive support
 24 system with his friends and family. Of course, we would
 25 ask the sentence to be concurrent to what he's going to
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1 MR. MARX: No, Your Honor.
 2 THE COURT: Well, in this particular case
 3 the victim ran out of her house calling for help, was
 4 dragged inside by -- back inside by the defendant. A
 5 neighbor called the police.
 6 When the police arrived, she had physical
 7 signs of having been attacked. She had black eyes. She
 8 had been choked. She had a bruise on the right side of
 9 her cheek. Both eyes were swollen. There were finger
 10 marks on her neck. The defendant had definitely been
 11 drinking, and it is most certainly true that he's an
 12 alcoholic. In 2008 he had a DUI with a BAC level of .230
 13 and a .225.
 14 I do not find it in the least bit credible
 15 that the defendant did not know that there was help
 16 available for people who were alcoholics. I have hundreds
 17 of people on my case load who are going to A.A. and find
 18 it helpful. It's free and there's hundreds of A.A. groups
 19 around the valley where people who want to be sober are
 20 having the tools to stay sober, and who have a support
 21 network that really supports them.
 22 This is not an isolated incident. Although
 23 the victim said that this is the first time this ever
 24 happened to her, she was in fear for her life.
 25 The defendant's drunken assertions that she
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1 have from whatever comes out parole commission, but aside
 2 from them, we're asking the court to consider retaining
 3 jurisdiction in this case, direct him to do some sort of
 4 alcohol specific programming so that he can get the
 5 treatment and focus for them.
 6 Whatever the parole commission is going to
 7 do, they're going to do, but at least in terms of this
 8 case, I think some alcohol programming would be beneficial
 9 to Mr. Charles and have that come sooner rather than later
 10 would be helpful for everybody.
 11 THE COURT: All right. What do you have to
 12 say, Mr. Charles?
 13 THE DEFENDANT: Your Honor, first of all, I
 14 want to apologize to my wife and my children and my
 15 family. As my attorney just said, I do have a drinking
 16 problem. I've never really actually had any rehab for
 17 that or any help for that. I know I need help. I don't
 18 know how to get it or go about it.
 19 My family made some phone calls for some
 20 intense outpatient or actually inpatient treatment. And
 21 aside, you know, what's going to happen with the court
 22 today, I just want to apologize to my family.
 23 THE COURT: Is there legal cause why we
 24 should not proceed?
 25 MS. BUTTRAM: No, Your Honor.
 CHRISTINE ANNE OLESEK
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1 was somehow cheating on him. When viewed in the context
 2 of the violence that he showed in other domestic
 3 relationships, presents the picture of a pretty classic
 4 domestic batterer. The other two wives or significant
 5 others that the defendant have both described very serious
 6 physical abuse. Much of it when the defendant was
 7 drinking. Both other major relationships, the mothers of
 8 his other children, report really significant domestic
 9 violence experienced by them.
 10 I note that the defendant previously had
 11 been ordered by Montana courts to do anger management, and
 12 either he didn't go or it didn't work and he hasn't
 13 applied it.
 14 I do note that he has been diagnosed with
 15 potentially some issues that would contribute to anger
 16 being a problem, but, frankly, the biggest problem is the
 17 defendant's manifest unwillingness to deal with the fact
 18 that he likes getting his way, and with other people by
 19 use of physical violence. He likes the level of control
 20 he gets when he controls others by abusing them and he has
 21 not been willing to address that in any meaningful
 22 fashion, even though we see significant prior abuse
 23 towards others.
 24 There's a 1998 and 2000 domestic violence
 25 misdemeanors out of Montana. There's a cruelty to animals
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<p>12</p> <p>1 that certainly indicates some real problems with anger 2 control. There's a 2008 DUI with damage to property. The 3 battery that he had, that was misdemeanor battery, just indicates a person who is pretty focussed on controlling others through his own anger and hostility.</p> <p>6 He's had a chance at supervised releases. 7 He was on a supervised release when this crime occurred, 8 and that's basically what we're talking about here. We're 9 talking about a major crime committed against the victim. 10 The physical evidence entirely supports her version. The 11 pictures support her version. What the officers observed 12 support her version. This was a serious offense.</p> <p>13 The defendant is not honest about the extent 14 of his prior violence. He does not accept responsibility 15 for his behavior in this crime nor in earlier incidents of 16 domestic violence. He minimizes or outright denies 17 well-documented incidents of physical abuse of others. He 18 admits to having no problems and he does not articulate 19 any desire to change anything about his pattern of 20 domestic violence towards others.</p> <p>21 It's a very serious picture and, 22 unfortunately, a rather classic picture of domestic 23 violence.</p> <p>24 Certainly there's also a history that's 25 significant of alcohol abuse. The defendant is most CHRISTINE ANNE OLESEK SRL-1044</p>	<p>13</p> <p>1 clearly an alcoholic and there are definite indications of 2 an unwillingness to control his drinking. And there are 3 many references in the record to harm to others that has 4 occurred when the defendant was drinking.</p> <p>5 I read through all the presentence materials 6 submitted in this case very carefully. And, frankly, I 7 thought that the presentence investigator, Mary Heinson -- 8 who once was my presentence investigator; so I'm well 9 aware of the fact that she's one of the most skilled 10 presentence investigators that the State of Idaho has ever 11 been fortunate enough to have -- way back in 2006 said 12 that the offense of grand theft and the lack of prior 13 felony convictions at that time would almost automatically 14 result in a recommendation for probation.</p> <p>15 She noted then though: However, when viewed 16 in the context of the defendant's juvenile history -- 17 which I haven't dealt with extensively, but is also cited 18 -- and the appended evaluation, the related conviction for 19 cruelty to animals as well as an alleged pattern of 20 domestic abuse, it raises the defendant's past behavior 21 still begs the question: What happens when things aren't 22 going his way?</p> <p>23 And at that point she made a very guarded 24 recommendation for probation. And I think realistically 25 his behavior since that time indicates that he's not CHRISTINE ANNE OLESEK SRL-1044</p>
<p>14</p> <p>1 amenable to community supervision. 2 There's a penalty for engaging in this 3 conduct. The price will only get worse if you continue to 4 engage in this conduct. Your next felony offense will 5 bring you to a persistent violator stage. It will make 6 you vulnerable to a sentence of five years to life in the 7 State of Idaho and in many other states. There are 8 significant penalties for people who continue to put 9 felonies on their record.</p> <p>10 I'm imposing the sentence of two years fixed 11 followed by eight years indeterminate for a ten year 12 sentence.</p> <p>13 You do have 42 days in which to appeal. 14 MS. BUTTRAM: Your Honor, will you be 15 signing a no contact order in this case? 16 THE COURT: I definitely will. 17 I will recommend that he receive a 52-week 18 domestic violence treatment program, if one is offered in 19 the institution. Because I think that that would be the 20 safest way to accomplish that rather clear need.</p> <p>21 MR. MARX: Your Honor, if the court would 22 make one exception on there? Mr. Charles reminded me 23 there will likely be divorce proceedings. To have contact 24 through attorneys or things of that nature. 25 THE COURT: I will make that change. CHRISTINE ANNE OLESEK SRL-1044</p>	<p>15</p> <p>1 (That completes the proceedings for this 2 date.) 3 ***** 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 CHRISTINE ANNE OLESEK SRL-1044</p>